



**DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
HAZARDOUS WASTE MANAGEMENT PROGRAM  
MANAGEMENT MEMO RESCISSION DOCUMENT**

**MANAGEMENT MEMO: #EO-94-017-MM**

**TITLE:**           **Guidance On Enforcing Closure Cost Requirements At Permit By Rule And Conditionally Authorized Facilities**

**AFFECTED PROGRAMS:**           Statewide Compliance Division and State Regulatory Programs Division.

**STATEMENT OF RESCISSION:**

Management Memo #EO-94-017-MM is hereby rescinded for the following reason:

This management memo suspended enforcement of closure cost requirements for facilities operating pursuant to Permit by Rule (PBR) or Conditional Authorization (CA) due to concerns that the requirement to base these cost estimates on worst case scenarios resulted in excessive financial assurance mandates. DTSC has determined that this enforcement suspension is no longer necessary because Section 67450.13 (attached) was added to Title 22, California Code of Regulations on February 24, 1996 eliminating the requirement that closure financial assurance be based on worst case scenarios and instead, allows closure financial assurance to be based on actual closure costs which will enable PBR and CA permitted facilities to comply with more reasonable financial assurance requirements.

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## **Title 22, California Code of Regulations**

### **§67450.13. Financial Assurance for Closure of Transportable Treatment Units and Fixed Treatment Units Which Are Authorized under Permit by Rule and Generators Who Are Authorized under Conditional Authorization.**

(a) Notwithstanding any other requirements of this article, this section shall apply to all owners or operators of transportable treatment units (TTUs) (as defined in section 66260.10) deemed to have a permit by rule pursuant to section 67450.2(a), with owners or operators of fixed treatment units (FTUs) (as defined in section 66260.10) deemed to have a permit by rule pursuant to section 67450.2(b), and generators operating pursuant to a grant of Conditional Authorization (CA)(as defined in Health & Safety Code section 25110.9.1(a)). Agencies of the State and Federal governments are exempt from the requirements of this section.

(1) The TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall prepare a written estimate of the cost of closing each unit. The estimate shall equal the actual cost or the costs estimated by an owner or operator or a generator that would be incurred for closing a treatment unit when using the owner or operator or generator's own staff and/or personal equipment. The closure cost estimate may take into account any salvage value that may be realized from the sale of wastes, facility structure or equipment, land or other facility assets. This estimate shall be submitted as an attachment to the Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99)).

(2) The TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall adjust the closure cost estimate for inflation by March 1 of each year. The adjustment shall be made as specified in subsections (a)(2)(A) and (a)(2)(B) of this section, using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator of the previous year.

(A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) The TTU owner or operator or FTU owner or operator shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (a)(2) of this section. The owner or operator shall maintain the following at the facility

during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsection (a)(1) of this section, and the latest closure cost estimate adjusted in accordance with subsection (a)(2) of this section.

(4) A generator operating pursuant to a grant of Conditional Authorization shall revise the closure cost estimate whenever a change occurs that increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (a)(2) of this section. The owner or operator shall maintain the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsection (a)(1) of this section, and the latest closure cost estimate adjusted in accordance with subsection (a)(2) of this section.

(5) On and after October 1, 1996, financial assurance for closure of a TTU, FTU, or treatment unit operated by a generator authorized pursuant to a grant of Conditional Authorization shall be obtained by one of the following methods:

(A) a closure trust fund, as described in section 66265.143(a);

(B) a surety bond guaranteeing payment into a closure trust fund, as described in section 66265.143(b);

(C) a closure letter of credit, as described in section 66265.143(c);

(D) closure insurance, as described in section 66265.143(d);

(E) a financial test and corporate guarantee for closure, as described in section 66265.143(e);

(F) Use of multiple financial mechanisms for closure costs as described in section 66265.143(g); or

(G) an alternative financial mechanism for closure costs, as described in sections 66265.143(f), or subsection (c) of this section. A certificate of deposit, as described in section 3-104(2)(c) of the Uniform Commercial Code, or a savings account as described in section 4-104(a) of the Uniform Commercial Code, are examples of alternative financial mechanisms.

(6) A FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization may request permission to fund the financial mechanism over a period not to exceed five (5) years from the CUPA or the authorized agency. The request to the CUPA or authorized agency shall contain the reason(s) and information as specified in subsections (c)(1) and (c)(2) of this section. A CUPA or the authorized agency, shall evaluate and respond to each request in writing within sixty (60) days of receipt.

(7) (A) Notwithstanding any other provision of regulation, financial assurance for closure of a FTU, operated pursuant to permit by rule, or treatment unit operated by a generator authorized pursuant to a grant of Conditional Authorization shall establish the CUPA or the authorized agency, as the beneficiary of any financial documents to be submitted to comply with the requirements of this section.

(B) Financial assurance for closure of a TTU shall establish the Department as the beneficiary of any financial documents to be submitted to comply with the requirements of this section.

(8) (A) On and after January 1, 1997, a financial assurance mechanism shall be submitted with the certification required in subsection (b) to the CUPA or the authorized agency, unless the FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization is exempt by subsection (e) of this section.

(B) On and after January 1, 1997, a financial assurance mechanism for closure of a TTU shall be submitted with the certification required in subsection (b) to the Department, unless the TTU owner or operator, is exempt by subsection (e) of this section.

(b) The FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit a Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99)) for each FTU facility that has one or more FTUs, or CA treatment location documenting compliance with the closure cost assurance requirements of subsection (a) of this section. The TTU owner or operator, operating pursuant to permit by rule, shall submit a Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations [DTSC 1232 (8/96)] for each TTU, documenting compliance with the closure cost assurance requirements of subsection (a) of this section. The certification for TTU operations shall accompany each initial notification required in sections 67450.2(a), 67450.3(a)(1) and 67450.3(a)(2) unless the notification was previously submitted to the Department before January 1, 1997. The certification for PBR fixed treatment unit operations shall accompany each initial notification required in sections 67450.2(b)(2), 67450.2(b)(3)(G), 67450.3(c)(1) and 67450.3(c)(2) unless the notification was previously submitted to the Department before January 1, 1997. The certification for a Conditionally Authorized treatment location shall accompany each initial notification required in Health and Safety Code section 25200.3(e) unless notification was previously submitted to the Department before January 1, 1997. The FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization who has previously submitted a notification to the Department before January 1, 1997, shall submit a copy of certification as identified in this subsection along with a copy of financial assurance mechanism as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section to the CUPA or the authorized agency. The TTU owner or operator operating pursuant to permit by rule, who has submitted a notification to the Department before January 1, 1997, shall submit a copy of certification as identified in this subsection along with a copy of financial assurance mechanism as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section to the Department.

(1) This certification shall contain the following information:

(A) The current closure cost estimate of each unit as determined in subsection (a) of this section.

(B) The mechanism(s) established to provide the closure cost assurance for each unit, as described in subsection (a)(5) of this section, and the original document(s) used to satisfy the requirements of the mechanism(s).

(C) The name and location of the financial institution, insurance company, surety company, or other appropriate organization used to establish the closure assurance for each unit.

(D) The effective date of the closure assurance for the unit(s).

(2) The certification shall be signed according to the requirements of section 66270.11 as those requirements apply to permit applications.

(c) Alternative Financial Mechanisms for Closure Costs.

(1) (i) The FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization may establish financial assurance for closure by means of a financial mechanism other than those specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section provided that, prior to its use, the mechanism has been submitted to and approved by a CUPA or the authorized agency. The mechanism shall be at least equivalent to the financial mechanisms specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. A CUPA or the authorized agency, shall respond in writing within sixty (60) days of receipt and shall evaluate the equivalency of a mechanism principally in terms of:

(A) Certainty of the availability of the funds for the required closure activities; and

(B) The amount of funds that will be made available. A CUPA or the authorized agency, shall also consider other factors deemed to be appropriate, and shall require the owner or operator, or a Conditionally Authorized generator to submit additional information as is deemed necessary to make the determination.

(ii) The TTU owner or operator may establish financial assurance for closure by means of a financial mechanism other than those specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section provided that, prior to its use, the mechanism has been submitted to and approved by the Department. The mechanism shall be at least equivalent to the financial mechanisms specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. The Department shall respond in writing within sixty (60) days of receipt and shall evaluate the equivalency of a mechanism principally in terms of:

(A) Certainty of the availability of the funds for the required closure activities; and

(B) The amount of funds that will be made available.

(2) The owner or operator, or a Conditionally Authorized generator shall submit to a

CUPA or the authorized agency, the proposed mechanism together with a letter requesting that the proposed mechanism be considered acceptable for meeting the requirements of this section. The submission shall include the following information:

- (A) Name, address and telephone number of issuing institution; and
- (B) Hazardous waste facility identification number, name, address and closure cost estimate for each TTU, FTU facility or a generator who is operating pursuant to Conditional Authorization intended to be covered by the proposed mechanism; and
- (C) The amount of funds for closure to be assumed for each TTU, FTU facility or a generator who is operating pursuant to Conditional Authorization intended to be covered by the proposed mechanism; and
- (D) The terms of the proposed mechanism (period covered, renewal/extension, cancellation).

(3) The CUPA or the authorized agency, shall respond in writing to the FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization of the determination made regarding the acceptability of the proposed mechanism in lieu of the financial mechanisms specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. This written request shall be provided within sixty (60) days.

(4) If a proposed mechanism is found acceptable, the FTU owner or operator, operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit a fully executed financial assurance document to the CUPA or the authorized agency. The document shall contain original signatures and shall be accompanied by a formal certification of acknowledgment. The TTU owner or operator, shall submit a fully executed financial assurance document to the Department.

(5) If a proposed mechanism is found acceptable, except for the amount of the funds, the TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall either increase the amount of mechanisms or obtain other financial assurance mechanisms as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) of this section. The amount of the funds available through the combination of mechanisms shall at least equal the current closure cost estimate.

(6) If a proposed mechanism is found acceptable by the CUPA or the authorized agency, the FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization may request permission to fund the financial mechanism over a period not to exceed five (5) years as part of the request for an alternative mechanism described in subsection (c)(1) of this section.

(d) If the closure cost estimate as specified in subsections (a)(1) and (a)(2) of this section is not more than \$10,000.00, the TTU owner or operator, FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization may comply with this section by submitting a certification signed

in accordance with section 66270.11. The FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit the certification to its CUPA or the authorized agency, that the FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization has sufficient financial resources to meet the closure cost requirements. Entities authorized to operate as of the effective date of these regulations who meet the conditions of this subdivision shall submit the signed original certification to the pertinent CUPA or the authorized agency, by January 1, 1997. The TTU owner or operator operating pursuant to permit by rule shall submit to the Department certification that the TTU owner or operator has sufficient financial resources to meet the closure cost requirements. The certification for TTU operations which have not yet submitted their initial notifications shall accompany each initial notification required by sections 67450.2(a), 67450.3(a)(1) and 67450.3(a)(2). The certification for FTU operations which have not yet submitted their initial notifications shall accompany each initial notification required by sections 67450.2(b)(3), 67450.3(c)(1) and 67450.3(c)(2). The certification for a Conditionally Authorized generator which has not yet submitted its initial notification shall accompany each initial notification required by Health and Safety Code section 25200.3(e).

(e) Notwithstanding the provisions of Chapter 45, a TTU or a facility operating pursuant to a permit by rule who meets the conditions of this section is not required to obtain financial assurance as specified in subsection (a), paragraph (5), subparagraphs (A) through (G) for the costs of closure of such a treatment unit. A facility who meets the conditions of this section shall maintain a Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99) with a copy of the original signature of the owner or operator at the facility containing the reason(s) why the owner or operator is eligible for this exemption. The FTU owner or operator who meets the conditions of this section shall submit the signed original certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99) to the CUPA or the authorized agency, by January 1, 1997. If the submittal is independent of PBR notification required by Sections 67450.2(b) or 67450.3(c), then the submittal must include the Business Activities Page, and the Business Owner/Operator pages of the Unified Program Consolidated Form (x/99)). The TTU owner or operator who meets the conditions of this section shall submit the signed original Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations(DTSC Form 1232) to the Department by January 1, 1997. The TTU owner or operator or FTU owner or operator operating pursuant to permit by rule shall meet the following condition on or after October 1, 1996, in order to be exempt from financial assurance requirements:

- (1) Operated no more than thirty (30) days in any calendar year.

(f) (1) The CUPA or the authorized agency, shall agree to the termination of the closure financial mechanisms as specified in subsection (a), paragraph (5), subparagraph (A) through (G), when:

(A) The FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization substitutes alternate financial assurance as specified in this section; or

(B) The CUPA or the authorized agency, releases FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization from the requirements in accordance with subsection (g) of this section.

(2) The Department shall agree to the termination of the closure financial mechanisms as specified in subsection (a), paragraph (5), subparagraph (A) through (G) for TTU owners or operators, when:

(A) The TTU owner or operator substitutes alternative financial assurance as specified in this section; or

(B) The Department releases the TTU owner or operator from the requirements in accordance with subsection (g) of this section.

(g) Release of the TTU owner or operator, FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization from the requirements of this section:

(1) Within 60 days after receiving certifications from the owner or operator of a FTU operating pursuant to permit by rule, and an independent professional engineer, registered in California, that a final closure has been completed in accordance with the prepared closure plan, the CUPA or the authorized agency, shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the regulated unit(s) or the facility, unless the CUPA or the authorized agency, has reason to believe that final closure has not been conducted in accordance with the prepared closure plan. The CUPA or the authorized agency shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been conducted in accordance with the closure plan or any other closure performance standards.

(2) Within 60 days after receiving notification from the generator operating pursuant to a grant of Conditional Authorization that final closure has been completed, the CUPA or the authorized agency, shall notify the generator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the regulated unit(s) or the facility, unless the CUPA or the authorized agency has reason to believe that final closure has not been conducted in accordance with the proper closure standards. The CUPA or the authorized agency shall provide the generator a detailed written statement of any such reason to believe that closure has not been conducted in accordance with the closure performance standards.



(3) When transfer of ownership or operational control of a facility occurs, and the new owner or operator of TTU, FTU operating pursuant to permit by rule, or a generator operating under a Conditional Authorization, has demonstrated to the satisfaction of the CUPA or the authorized agency, that he or she is complying with the financial requirements of this section, the CUPA or the authorized agency shall notify the previous owner or operator, or a generator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

(4) Within 60 days after receiving certifications from the owner or operator of a TTU operating pursuant to permit by rule, and an independent professional engineer, registered in California, that a final closure has been completed in accordance with the prepared closure plan, the Department shall notify the owner or operator in writing that he or she is no longer required by this section to maintain financial assurance for final closure of the regulated unit(s). If the Department has reason to believe that final closure has not been conducted in accordance with the prepared closure plan, then prior to releasing the financial assurance mechanism the Department shall provide the owner or operator with a detailed written statement of any such reason to believe that closure has not been conducted in accordance with the closure plan or any other closure performance standards.

(5) When transfer of ownership or operational control of a TTU occurs, and the new owner or operator of TTU operating pursuant to permit by rule has demonstrated to the satisfaction of the Department that he or she is complying with the financial requirements of this section, the Department shall notify the previous owner or operator in writing that it is no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 208, 25150 and 25245, Health and Safety Code.

Reference: Sections 25150, 25200.2, 25245, and 25245.4, Health and Safety Code.

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